

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**SPECIAL SESSION
November 20, 2006**

The Board of Supervisors of Maricopa County, Arizona convened in Special Session at 10:10 a.m., November 20, 2006, in the Tom Sullivan Conference Room, 301 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman, District 2; Fulton Brock, Vice Chairman, District 1; Andy Kunasek, District 3 and Max W. Wilson, District 4. Absent: Mary Rose Wilcox, District 5. Also present: Fran McCarroll, Clerk of the Board; Shirley Million, Minutes Coordinator; David Smith, County Manager; and Dean Wolcott, Outside Counsel to the Board. Votes of the Members will be recorded as follows: aye-no-absent-abstain.

EXECUTIVE SESSION CALLED

Pursuant to A.R.S. §38-431.03, et.al., motion was made by Supervisor Brock, seconded by Supervisor Kunasek, and unanimously carried (4-0-1) to recess and reconvene in Executive Session for the purpose of reviewing matters on the Executive Session agenda dated November 20, 2006, as listed below pursuant to the listed statutory references. All members remained in session when the meeting reconvened.

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(3) and (A)(4)

E-1. Dowling v. the Board of Supervisors CV2006-052611, Counterclaim and Third Party Claim.

Sandi Wilson, Deputy County Manager
Brian Hushek, Deputy Budget Director
Tom Irvine, Outside Counsel
LeeAnn Bohn, Budget Manager
Rebecca Francis, Outside Counsel
Ross Tate, County Auditor
Tom Manos, CFO
Shawn Nau, General Government Services
Shelby Scharbach, Finance
Brian Hushek, Deputy Budget Manager
Chiefs of Staff Candland, Latto, Isham, Leija

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; CONTRACTS SUBJECT TO NEGOTIATION – ARS §38-431.03(A)(3) AND (A)(4)

E-2. Advice regarding legal issues and options concerning County Regional School District/Accommodations School funding, financial matters, management issues/Treasurer related management, investment and financial issues.

Sandi Wilson, Deputy County Manager
Brian Hushek, Deputy Budget Director
Tom Irvine, Outside Counsel
LeeAnn Bohn, Budget Manager
Rebecca Francis, Outside Counsel
Ross Tate, County Auditor
Tom Manos, CFO
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BOARD OF SUPERVISORS AND BOARD OF SUPERVISORS SITTING AS BOARD OF DEPOSIT

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; CONTRACTS SUBJECT TO NEGOTIATION – ARS §38-431.03(A)(3) AND (A)(4) TO THE BOARD OF SUPERVISORS SITTING AS THE BOARD OF DEPOSIT

E-3. Advice regarding legal issues and options concerning Treasurer-related management, investment and financial issues arising from or discovered in the County Regional School District/Accommodations School matters.

Sandi Wilson, Deputy County Manager
Brian Hushek, Deputy Budget Director
Tom Irvine, Outside Counsel
LeeAnn Bohn, Budget Manager
Rebecca Francis, Outside Counsel
Ross Tate, County Auditor
Tom Manos, CFO
Shawn Nau, General Government Services
Shelby Scharbach, Finance
Brian Hushek, Deputy Budget Manager
Chiefs of Staff Candland, Latto, Isham, Leija

RECESS EXECUTIVE SESSION AND RECONVENE IN OPEN SESSION

Chairman Stapley reconvened the Board in open session. The Board did not consider the following three agenda items and no action was taken.

REGIONAL SCHOOL DISTRICT #509

○ **STATUS REPORT – NO ACTION**

Item: Receive a status report on the Regional School District, including its financial status, management issues, the status of student achievement, the status of litigation and the status of McKinney Vento matters.

○ **VOUCHERS/WARRANTS – NO ACTION**

Item: The Board of Supervisors, pursuant to its authority granted in A.R.S. §15-1001, will consider for approval vouchers presented by the County School Superintendent of Maricopa County to draw warrants on the County Treasurer against Maricopa County Regional School District #509 School District funds for necessary expenses against the school district and obligations incurred for value received in services as shown in the Vouchers. Approval to draw warrants that are required to continue the operation of the School District pursuant to Judge Fields' ruling in Schweikert v. Dowling (CV2006-014285) but cannot be supported by the District's current cash balances is given under protest. (ADM3814-003)

The Board of Supervisors may consider ratifying any Maricopa County Regional School District #509 vouchers and/or warrants approved in accordance with the procedures of A.R.S. §15-321 since the last meeting of the Board of Supervisors. The Board of Supervisors may hear staff

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reports on the vouchers and warrants being considered. The Vouchers are on file in the Maricopa County's Clerk of the Board's office and are retained in accordance with ASLAPR approved retention schedule. (ADM3814-003)

Staff may update the Board of Supervisors on regional schools operations and finances. (ADM3814-005)

o **TREASURER MATTERS – NO ACTION**

Item: Consideration and possible action instructing the County Treasurer concerning investments and credit lines related to the Treasurer's Investment Pool.

Consideration and possible action instructing the County Manager to study and recommend as to Maricopa County managing and investing its own funds that are deposited by statute into the Treasurer's Investment Pool.

**BOARD OF SUPERVISORS, SITTING CONCURRENTLY AS THE
BOARD OF DEPOSIT, CONSIDERED THE FOLLOWING IN OPEN SESSION**

ORGANIZATIONAL MATTERS

Tom Irvine distributed a handout and reported on the role of the Board of Deposit as determined by staff and counsel.

POTENTIAL ACTIONS

Item: Consideration and possible action to request information from the County Treasurer pursuant to statute, to instruct the County Treasurer as to investments, credit lines and other matters set forth in A.R.S. §§11-251(1), 35-321 et.seq. and Chapter 3, Article 4 of Title 11 of the A.R.S. and to instruct the County Manager as to management follow up concerning these matters.

Chairman Stapley welcomed representatives from the County Treasurer's Office, Steve Partridge, Blair Bradshaw and attorney for David Schweikert in the Dowling litigation, Pamela Overton, to this joint meeting of the Board of Supervisors and the Board of Deposit for Maricopa County, as defined by statute. He asked Tom Irvine to review the concerns of the Boards.

Mr. Irvine reported on actions taken since County School Superintendent Sandra Dowling requested financial assistance late last year, which led to the Board's discovery of a \$4.2 million deficit drawn from a special treasurer's fund by the Accommodation District over the preceding five-year period. He said the Board would like to understand how this occurred, to make sure it stops, and to understand the Treasurer's investment process with regards to school warrants and certain other actions. He explained that the Supervisors are also sitting as the Board of Deposit, which is a partner with the Treasurer in dealing with the investment pool and other actions including the registration of warrants and Lines of Credit as approved by these two sitting Boards.

Chairman Stapley said that timing on this matter was important and the Board's intention is to meet in an appropriate and legal manner on the matter. He said that the Accommodation School District according to the reports received from the Treasurer's Office is in a negative financial position and has outstanding warrants and there is a concern that these warrants are being dealt with appropriately.

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Steve Partridge responded to a question from the Chairman by reported that the Treasurer's Office has been treating the Accommodation Schools and the District the same as any other school district. He acknowledged that there were significant differences in that they receive no property tax monies and they have no Line of Credit. He said Judge Fields had initially said that the Treasurer had to keep paying school warrants even if they are negative. He referenced the telephone conference with Judge Fields on the previous Friday and said he confirmed that the Treasurer was to "treat every account as having a zero balance as of July 1, 2006" and in applying that, they are now on the brink of a negative situation. He said that the minute their funds go negative "we start registering" and this should happen this week through meeting their payroll. He next explained the Treasurer's definition of warrant registration. He also explained that the computer program they use for all accounts has rather limited tracking and defining abilities.

Chairman Stapley asked Mr. Irvine if this explanation coincided with his interpretation. Mr. Irvine replied that Partridge was referring to ARS § 15-996 which lists the accounts to look at before registering warrants. He said that Mr. Cantelme contends that Judge Fields' order says to ignore that statute and look at the totality of it, which would put the District in a negative balance. He added that in looking at it according to Mr. Partridge's definition, in looking at certain accounts in the statute, there is a \$25,000 balance.

Mr. Partridge said there could be warrants "out there" that haven't been turned in yet, but the Treasurer's Office operates on a cash basis and reacts only to warrants as they are presented. He felt it was "obvious" that the District would have to release the payroll warrants this week, and their accounts would go negative..

Ms. Overton said if all accounts, restricted and unrestricted, were zeroed out July 1, they are now negative. She added they had made the decision last Friday to continue to follow the statute as the safest route to go.

Mr. Partridge referenced the District as being "on a slippery slope" and he could not see any way to reverse that or for them to even catch up. He said, "It's a matter of when, not if, they will go down."

Tom Irvine mentioned two other things he had not reported to the Board as yet. He said that Superintendent Tom Horne, State Department of Education, has notified the Accommodation District that its budget for 2007 is illegal in that "it is over all state law limits by \$330,000." The District has been ordered to cut their budget by \$330,000 by December 15, 2006. The Accommodation District was also notified last week that its share of fees and costs in a long-term retirement system case, the Burke case, is \$287,000, which is also supposed to be paid by the District by December 15th. He said these amounts also speak to the slippery slope situation. Also, he reminded the Board that Steve Zimmerman had testified under oath that the District "could easily get through November and December 2006" in projecting their cash-flow analysis.

He explained that the suggested motion has five parts and explained them. Supervisor Brock asked the treasurer to explain what is meant by their term of "investing in negative balances."

Mr. Partridge said most school districts get ADM monies based on enrollment from the State tax monies twice a year and they also have a Line of Credit in case they are out of funds during a short interim period prior to the ADM or tax deposit. If the Line of Credit is maxed out and there are warrants to be paid, the Treasurer's Office determines whether or not to invest in those "negative balances," and charges interest on loaned monies until repaid. Blair Bradshaw said that otherwise the school district would have to shut

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down during heavy population growth periods until funds “catch up” and start to come in for the corrected number of students.

The Chairman said, “Isn’t that a legislative problem? That’s not the Treasurer’s problem. That’s not the County’s problem.”

Mr. Bradshaw replied, “You’re right. So then, the option is, yes they can borrow their line of credit up to the point of the line of credit.” He said the warrants are held until monies are received to enable cashing them and salaries and vendors might not get paid for several months, “We know the money is coming in, it’s backed by property taxes, so it becomes an investment decision.”

The Chairman said, “Would you agree that the Board of Deposit has the right to ask Mr. Schweikert not to invest in buying these types of warrants?”

Mr. Irvine asked to clarify his understanding in buying these warrants, “that the warrant has not been registered and the balance is allowed to be negative without registering the warrant.”

“It’s in lieu of registration,” Steve Partridge said.

Mr. Partridge continued that he had a problem with #3 of the motion, which states, “The Treasurer is instructed not to invest in negative balances,” because it involved all school districts and they (the Treasurer) may have to register warrants on a viable district. He classified the Treasurer’s investments as a security factor for some school districts.

Chairman Stapley said, “If that’s the case then the legislature is going to need to do something about it to fix it.”

Mr. Irvine added that statute allows school districts to get a commercial line of credit, in addition to the statutory line of credit through this Board, to enable them to deal with their day-to-day money problems.

Supervisor Brock said his concern is the millions of dollars that were overdrawn prior to July 1, 2006, that keep getting ignored. He said it was his understanding that through ARS §35-323 322, the Board of Deposit can order the County Treasurer to sell any such securities, “but we are never even being notified about them.” He continued that the Board is worried about compliance with that statute, particularly with regards to the millions of dollars that are outstanding from the Accommodation School. He said the Board is uncomfortable with the Treasurer considering those warrants as securities. He referenced an earlier statement by Mr. Partridge on their IT system and asked if he felt certain that system was “catching all of these amounts and registering them as line items.”

Mr. Partridge said it was premature to look at that until the auditors are done. There is no contention with the first two parts of the proposed motion and Mr. Partridge again referenced a school district being “shut down” for a short period.

Chairman Stapley said, “I believe this Board is unanimous in feeling that this concept of investing in negative balances was never intended to take place, especially with a district like the Accommodation District.”

Supervisor Brock said it is important for the Board of Deposit to have greater communication on these matters and he, personally, was very uncomfortable in investing in negative balances, stating, “There is no such thing as that in the real financial world. No one invests in negative investment balances.” He said

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the Board is worried about who is going to pay the \$4 million deficit back and asked, "Is this going to come out of your (the Treasurer's) budget?"

David Smith interjected that Al Macias had some new information that has an impact on this discussion.

Al Macias reported a news flash that Dr. Dowling and several others have been indicted on 29 counts by the Attorney General's Office. Chairman Stapley then revealed that Sheriff Arpaio had phoned him about this, in confidence, earlier in the day. He added that five individuals had been served this morning by the Sheriff's Office and Superintendent Dowling was served on 25 of the 29 counts. He was told that this is only the first round and other indictments may follow.

Discussion continued on the proposed motion as it was amended in several places. Supervisor Kunasek asked Mr. Irvine to read the final motion, now having six points, in its entirety.

1. The Treasurer shall provide records to the County Manager showing any negative balances in any funds in the investment pool.
2. The Treasurer shall provide records to the County Manager of the use by any entity of the lines of credit approved by the Board of Supervisors.
3. The Treasurer shall meet with County staff to demonstrate and document points 1 and 2 of this motion, and, at that meeting, agree on a date when the documents shall be delivered.
4. The Treasurer is instructed not to invest in "warrants," no matter how warrants are defined, without the approval of the Board of Deposit.
5. The Treasurer shall provide the information required (on CD's) by ARS 35-323(F) to the Board of Deposit.
6. The Board of Deposit will meet again within two weeks to consider these dollar items.

Motion was made by Supervisor Brock to approve the actions as read by Tom Irvine, motion was seconded by Supervisor Kunasek and unanimously carried (4-0-1) to approve these actions as given above.

MEETING ADJOURNED

There being no further business to come before the Board, the meeting was adjourned.

Don Stapley, Chairman of the Board

ATTEST:

Fran McCarroll, Clerk of the Board